



# Chapter Twelve

## LETTING AND CONTRACT AWARD

BUREAU OF LOCAL ROADS AND STREETS MANUAL



**Chapter Twelve**  
**LETTING AND CONTRACT AWARD - MFT and State Funds**

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### 12-1 PROCUREMENT PROCEDURES

The department will apply the following procedures when exercising the approval responsibility given to it by the Illinois Highway Code for the letting of local agency contracts or approval of day labor.

The procurement procedures described herein apply to work that can be performed either by a contractor or by day labor. Day labor work typically requires the purchase of materials to be incorporated into work performed by local agency employees using local equipment. The following Sections discuss the common types of procurement and day labor procedures.

#### 12-1.01 Types of Contracts

##### 12-1.01(a) Formal Contracts

A formal contract is a written agreement between a local agency and a contractor setting forth the obligation of the parties including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

##### 12-1.01(b) Material Proposals

1. A material proposal is a form of contract that is used to purchase materials for day labor operations. Material may be delivered to the job site, stockpile, or other location by the material supplier. The local agency may also pick up the material at the material supplier facility using local agency equipment and employees.
2. A material proposal may also be acceptable for particular operations performed by a contractor in circumstances when the cost and delivery of material for the work operation is the substantial or principal cost of the contract such as those requiring the bidder to furnish and spread material on the road, broom and roll aggregate for seal coat, performing a small amount of base patching or repair. A material proposal may be used for the following work operations provided the material cost and delivery is the primary cost of the contract:
  - bituminous surface treatments including base preparation,
  - pavement striping including paint, thermoplastic, and preformed pavement marking,

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- landscape planting,
- furnishing and erecting guardrail, and
- intermittent resurfacing.

### 12-1.01(c) Quotations

A quotation is a contract commitment from a material supplier for a specified period, with the understanding that the local agency will obtain the material at the lowest on-the-road cost. A quotation may be used in lieu of a material proposal for the purchase of material, including the placement in stockpiles or storage tanks or the pouring of ready-mixed concrete. It may not be used if the supplier is to incorporate the material into the roadway. Quotations are useful when the material may be needed at various locations and times, the quantity of material may not be known, or the same supplier may not always have the material available.

### 12-1.02 Methods of Procurement

Contracts, material proposals, and quotations that use MFT and other State funds are subject to the following methods of contract procurement. The following Sections discuss common types of procurement and provide guidance in determining when a formal bid is required.

#### 12-1.02(a) Competitive Sealed Bids

Competitive sealed bids involve the preparation of an invitation for bids for a formal contract, a material proposal, or a request for quotations; see Section 12-2.01. The bids must be advertised and a public letting held, see Section 12-3. Consider the following when assessing the need for competitive sealed bids:

1. Formal Contracts. Bids are required for all projects estimated to cost \$20,000 or more.
2. Material Proposals. Bids are required for the purchase of materials during the duration of a day labor construction project for either of the following:
  - the purchase of similar type of material (e.g. all grades of aggregates, all sizes pipe culverts, all grades of bituminous materials) is estimated to cost \$20,000 or more; or
  - the purchase of all materials furnished from any one vendor, including the cost for placement or incorporation of the materials into the work by that vendor, is estimated to cost \$20,000 or more.
3. Quotations. The requirement for bids is the same as for material proposals. All bidders may revise the quotation on a monthly basis by sending the local agency a registered letter at least five days before the end of any month. The new quotation will go into effect on the first day of the month following proper notification. Purchases are permitted from only those suppliers that submitted acceptable quotations at the public letting.

**12-1.02(b) Sole Source Suppliers**

Occasionally, a local agency may require more than \$20,000 worth of a material for which there is only one available supplier (e.g. ready-mix concrete delivered to a job site where there is only one producer within the allowable time-of-haul distance). If the local agency can demonstrate to the district that a single supplier is the only practical source, MFT funds may be used for a negotiated price material purchase. The local agency is responsible for obtaining district approval.

**12-1.02(c) Emergency Purchases**

Bids are not required for an emergency purchase, unless time permits. Emergencies are situations that are, or may become, a detriment to public health, safety, service, or property (e.g. a situation requiring immediate repair to prevent further damage to public property or serious disruption in public service). It is desirable to first obtain district approval by telephone or letter. The nature of the situation, however, may dictate otherwise, which must be assessed on a case-by-case basis. Within 10 days of the emergency purchase, provide the district with written notification of the emergency condition, the name of the vendor or contractor involved, and the amount expended. The amount is not limited, but the emergency must be shown to exist.

**12-1.02(d) Centralized Joint Purchasing**

Local agencies may purchase materials for public projects jointly with the State. These purchases must be conducted in accordance with the policies set forth by the Department of Central Management Services (CMS). These policies and the publication *Joint Purchasing Manual, Government Units Shoring Through Centralized Procurement* are available from the Procurement Services Division of CMS or from the CMS website.

Local agencies may also use MFT funds for cooperative joint purchases of materials among two or more agencies. The district will assist these agencies in assembling the bidding specifications and proposals, advertising for bids, and evaluating the bids. Subsequent to receiving bids, each separate agency will be financially responsible for their respective share of the joint material purchase.

**12-1.03 Use of "Alternative" and "Type" Bids**

"Alternative" bids and "Type" bids are used when a local agency desires to receive bids for two or more different types or classes of work for a particular work item. When used, the proposal and plans must differentiate the types or classes of work by using the prefix word "Alternative" or "Type" followed by a differentiating number or letter (e.g. Alternative I, Alternative II, Type A, Type B).

**12-1.03(a) Alternative Bids**

Use alternative bids where the types or classes of work are comparable (equal and competitive). Do not use alternatives where identical pay items can be used to define the scope of all types or classes of work. Rather, provide bidders the option of selecting the type or class of work. When this method is used, it is not mandatory that the contractors bid on all alternatives, but the award must be made to the lowest responsible bidder regardless of which alternative bid is lowest. The following is a sample statement for alternative bids:

*The plans and proposal contain designs for concrete and bituminous pavements with equivalent pavement design lives. The local agency has no preference for the one to be constructed. The award is made to the lowest responsible bidder regardless of which alternative has the low bid.*

**12-1.03(b) Type Bids**

Type bids should be used sparingly but may be used when the types or classes of work are not directly comparable (equal or competitive). This method is typically used where little information exists on the relative cost of the types or classes of work or when a local agency may want to select a higher type construction if the additional cost for a higher type is acceptable to the local agency. Type bids may also be used if a local agency has a limited amount of funds available but wants to maximize the construction based on the funds available. In this case, each type would be a different project length. The awarding agency may make the award to the lowest responsible bidder for any type. The proposed criteria to be used in determining the lowest bidder should be developed by the awarding agency before bids are requested. The following is a sample for type bids:

*The plans and proposal contain designs for concrete and bituminous pavements. The pavement design life for one pavement may be different than the other. Base the decision on which type of pavement to award on the difference of cost between the two types. The award is made to the lowest responsible bidder of either type.*

**12-1.03(c) Alternative Deliveries**

Material proposals requesting bids for materials via two or more alternative delivery methods must include the unit price cost differential for the purpose of determining the lowest bid favorable to the awarding authority. For example, bids are solicited for furnishing gravel or crushed stone free on board (FOB) a truck at the plant and for furnishing and hauling the material to the job. It is necessary to add the cost of delivery to the FOB plant bid to determine the bid which is most advantageous to the awarding authority. The cost of delivery includes the cost per mile (km) of hauling the material to the job site and the cost for unloading the material at the job site. These costs should be predetermined and stipulated in the material proposal on a unit price basis. These unit prices, although estimated, should be as accurate as practical based on the best available cost information.



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### **12-1.03(d) Combination Bids**

A combination bid is a total bid received for two or more proposals on the same letting. This bid may be less than the total of the individual bids on each proposal. Any allowable combination must be specifically established by the local agency and included in the letting advertisement. To submit a combination bid, the contractor must also submit a separate bid with unit prices for each pay item for each proposal of the combination. A contractor is not required to submit a combination bid or a bid on each proposal of the combination. The local agency has the right to make awards to the low bidder for the combination or to the low bidder for each separate proposal.

### **12-1.04 Proposal Guaranty**

Bidders are required to furnish a Proposal Guaranty with their bid as evidence of good faith. The Proposal Guaranty may be a bid bond, bank cashier's check, or a certified check for not less than 5% of the amount bid or for the amount specified in the special provisions. All bids for MFT- or State-funded contracts and material proposals must be accompanied by a Proposal Guaranty in accordance with the special provisions.

#### **12-1.04(a) Elimination of Proposal Bid Bond**

A local agency may deny the use of a bid bond as a Proposal Guaranty, but may not further restrict the Proposal Guaranty.

#### **12-1.04(b) Special Assessment Projects**

If a municipality intends to use MFT funds for the public benefit portion of a project constructed under the *Local Improvement Act*, the provisions of 65 ILCS 5/9-2-103 are applicable to the furnishing of a Proposal Guaranty. All bids submitted must be accompanied by cash or a certified check, payable to the President of the Board of Local Improvements, for not less than 10% of the total amount. This will require the insertion of a special provision into the proposal.

#### **12-1.04(c) Illinois Department of Corrections**

The Illinois Department of Corrections industries will frequently request bidding proposals to furnish materials that they manufacture. They are exempt from the requirements to furnish a Proposal Guaranty with bids to furnish materials for MFT- and State-funded projects.

### **12-1.05 Day Labor Procedures**

#### **12-1.05(a) Approval of Day Labor Forces**

Sections 605 ILCS 5/5-403, 5/6-7.01.1, and 5/7-203.1 provide that, with IDOT approval, a local agency may perform work with its own forces. The local agency is required to obtain approval

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in writing from the district prior to initiating this type of work, and include the following information in the written request:

- type of work to be performed,
- approximate quantity of work,
- equipment owned or available,
- previous experience with the type of work, and
- past performance on conducting similar work.

Upon receipt, the district will review and approve the request as follows:

1. Equipment. Equipment may be used by the local agency for day labor work as follows:
  - a. Owned and On-Hand Equipment. Equipment that is owned and on hand by the local agency may be used for day labor work. All asphalt plants require approval from the Bureau of Materials and Physical Research.
  - b. Leased/Rental Equipment. Long-term lease or rental purchase equipment must be on hand and the terms of the lease or rental purchase available.
  - c. Specialized Equipment. For municipalities and counties, specialized equipment may be leased or rented when the majority of equipment required for the work is owned by the local agency. This exception requires prior district approval.
  - d. Road Districts. Day labor forces using only county or road district equipment may perform road district work. Road district equipment may include the following:
    - equipment that is owned by the road district (road districts may not lease or rent equipment);
    - equipment that is being acquired under contracts providing for installment payments over a period of not more than 10 years, with interest on unpaid balance not to exceed 9% (605 ILCS 5/6-201.17); or
    - equipment that may be used or acquired through an agreement with other highway commissioners, corporate authorities of any municipality in the same or adjoining counties, or with the county board in the same or adjoining counties for the lease or exchange of idle equipment (605 ILCS 5/6-201.10).
2. Previous Experience. This review will involve the amount of day labor work performed by the local agency and a review of the experience of the supervisory personnel.

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3. Past Performance. This review will involve the review of correspondence relative to progress, performance, and record of meeting obligations on previous day labor projects.
4. Previously Approved Day Labor Forces. A local agency that has been approved for a specific type of work may be reapproved, if performance has been satisfactory.
5. Types of Work. A local agency must be approved for each type of work it is requesting to be performed by day labor forces. For example, approval for bituminous surface treatments will not qualify a local agency to construct a plant mix surface.

### 12-1.05(b) Equipment Ownership Expenses

The equipment usage cost eligible for MFT or State funds for a day labor project is based on the actual time the equipment is in operation during the duration of a day labor project. The local agency is responsible for listing all equipment to be used and the rate to be reimbursed for each piece of equipment on Form BLR 12110. Forward the completed form to the district for approval.

The usage rate to be paid for publicly or privately owned equipment must not exceed the rates in the *Schedule of Average Annual Equipment Ownership Expense*, which is published annually by the Bureau of Construction. This schedule is available on the IDOT website. If the Bureau of Construction has not yet released the current year's edition of the schedule, use the rate in the previous year's edition. Note that the rate in the schedule includes the standard operating cost for servicing and repair, fuel, lubricants, filters, tires, etc. No additional compensation for ordinary operating expenses will be allowed. For equipment rates that are not listed in the schedule, complete and send the Equipment Expense Rate Data (Form BC-2370) to the district for forwarding to the Bureau of Construction. Ensure that any supplemental information that can be used in determining the rates is attached to the form.

Expendable equipment (i.e. equipment completely consumed or used up on a project) costing \$1,000 or less, including small tools, can be purchased with MFT funds for use on a day labor improvement.

### 12-1.05(c) Agreed Unit Prices

Agreed unit prices may be used in place of actual labor and equipment usage costs when the local agency will perform the work with its own work force and equipment. Ensure that the agreed unit price includes all the labor and equipment necessary to complete the item of work as specified. An agreed unit price is pay item specific. Do not include in the agreed unit price for one pay item the labor and equipment cost associated with another pay item. If the material cost is known (e.g., material furnished from a publicly owned source such as a general stockpile) it may be included in the agreed unit price.

The request for agreed unit prices must be submitted with the estimate of cost to the district for approval. Include the following statement:

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      (local agency)       hereby agrees to complete the preceding schedule of work  
at the unit prices as shown.

The above statement is signed by the following individuals:

- the county engineer for work to be performed by the county,
- the highway commissioner and county engineer for work to be performed by the road district, and
- an appropriate municipal officer having duties in connection with the work for municipalities.

### **12-1.06 Agreed Unit Prices for Bituminous Treatments of Municipal Streets by Road Districts and Counties**

Upon approval of the district, a municipality may make arrangements with the road district or county in which the municipality is located to have it furnish and apply bituminous materials and seal coat aggregates on municipal streets at an agreed price or at actual cost. In requesting approval of these arrangements, provide information showing the price for the material that the township or county must pay, and the amount to be charged for hauling and spreading the materials by county or road district forces.

**12-2 INVITATION FOR BIDS - LOCAL-LET PROJECTS**

Most MFT- and State-funded projects have a local letting. If a project is scheduled for a State letting, see Section 24-1.

An invitation for bids refers to the total compilation of pertinent bidding information relative to the project assembled into a single booklet for issuance to bidders. The bidders make a written offer to perform the proposed work. The local agency is responsible for preparing and submitting the proposal to the district for review and approval along with the status of the utility adjustments and right-of-way acquisition.

**12-2.01 Invitation for Bid Contents****12-2.01(a) Contract Proposals**

Include the following in the formal contract invitation for bid that is submitted to the district:

- Bid Cover (Form BLR 12210);
- Notice to Bidder (Form BLR 12220);
- Proposal Bid Bond (Form BLR 12230), if allowed by the local agency;
- Affidavit of Availability (Form BC-57), if prequalification is required;
- Contract Proposal (Form BLR 12221);
- Contract Schedule of Prices (Form BLR 12222) (the pay item wording must be in accordance with the IDOT *Standard Specifications for Road and Bridge Construction* and the Special Provisions);
- Proposal Signatures (Form BLR 12223);
- Check Sheet for Supplemental Specifications and Recurring Special Provisions, with applicable items marked;
- Contract Special Provisions, including Form BLR 11310;
- applicable Bureau of Design (BDE) Special Provisions;
- applicable Local Road Special Provisions;
- applicable Guide Bridge Special Provisions;
- applicable Material Specifications;
- applicable District Special Provisions;
- applicable local agency Special Provisions;
- plan sheets, when plans are prepared on reduced size sheets, they may be included in the proposal;

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- applicable *IDOT Highway Standards*, if not included in the plans;
- permit documents including, but not limited to:
  - US Army Corps of Engineers permits, letters of authorization, and attachments;
  - IDNR Office of Water Resources permits;
  - US Coast Guard permits; and
  - Illinois Environmental Protection Agency permits;
- foundation borings; include in the plans or proposal the location and log data documenting the results of any subsurface explorations for each foundation sounding or boring;
- Storm Water Pollution Prevention Plan, Contractor Certification Statement, and Erosion Control Plan, if required; and
- Prevailing Wage Rates.

### 12-2.01(b) Material Proposals

Include the following in the material proposal invitation for bid that is submitted to the district:

- Bid Cover (Form BLR 12210);
- Notice to Material Letting/Material Proposal (Form BLR 12240);
- Proposal Bid Bond (Form BLR 12230), if allowed by the local agency;
- Affidavit of Availability (Form BC-57), if prequalification is required;
- Material Schedule of Prices (Form BLR 12241); the pay item wording must be in accordance with the *IDOT Standard Specifications for Road and Bridge Construction* and the Special Provisions. All items in a group must be listed together under a single group number;
- Check Sheet for Supplemental Specifications and Recurring Special Provisions, with applicable items marked;
- Contract Special Provisions, including Form BLR 11310;
- applicable BDE Special Provisions;
- applicable Local Roads Special Provisions;
- applicable Guide Bridge Special Provisions;
- applicable Material Specifications;
- applicable District Special Provisions;
- applicable local agency Special Provisions;
- applicable *IDOT Highway Standards*; and
- Prevailing Wage Rates, if the provisions of Section 12-1.01(b)2 apply.

**12-2.01(c) Request for Quotations**

Include the following information with the Request for Quotations (Form BLR 12250):

- Contract Special Provisions, including Form BLR 11310;
- applicable Inserted Special Provisions;
- applicable Local Road Special Provisions;
- applicable Guide Bridge Special Provisions;
- applicable Material Specifications; and
- applicable District Special Provisions.

**12-2.01(d) Bid Bonds**

If the local agency allows a bid bond as a Proposal Guaranty, include Form BLR 12230 in the proposal. If an electronic bid bond will be allowed in lieu of a traditional bid bond, the local agency is responsible for checking the designated box at the bottom of Form BLR 12230 prior to the proposal being distributed to interested bidders. Bidders will be required to supply an electronic bid bond identification number from an IDOT-approved surety company. Special software is not required for implementation; however, the local agency will need Internet access to verify the status of the electronic bid bond.

**12-2.01(e) Wage Rates**

Wage rates, as determined by the local agency or the Illinois Department of Labor (IDOL), must be included in all contracts and material proposals containing bid items to be directly incorporated in the work by other than local agency forces (e.g. roadway components bid in place). The applicability of these wage rates in material proposals for bid items not directly incorporated in the work is governed by 820 ILCS 130/3. IDOL interprets the current law to exempt hauling of materials by suppliers to stockpile locations. All questions of applicability of the Prevailing Wage Act are governed by the determinations of the IDOL. Prevailing wage rates may be obtained from the Illinois Department of Labor's website.

The Contractor and each subcontractor shall submit monthly, in person, by mail, or electronically a certified payroll to the public body in charge of the project. The certified payroll shall consist of records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each period, the number of hours worked each day, and the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor which avers that:

- such records are true and accurate;

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- the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required; and
- the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

The public body is required to keep the certification records submitted for a period of not less than three years. Furthermore, these records, except an employee's address, telephone number, and social security number, shall be made available in accordance with the Freedom of Information Act.

### **12-2.01(f) Incentive/Disincentive Provisions**

Incentive/disincentive provisions are typically used in contracts to motivate contractors to complete a critical project ahead of schedule. The incentive clause will compensate the contractor for each day that work is completed ahead of schedule and the disincentive clause will assess a deduction for each day the schedule is overrun. Use of these provisions should be restricted to critical projects (e.g. projects where it is highly desirable to minimize traffic delay and inconvenience) and must be approved by the Central BLRS. See Section 66-2 of the *BDE Manual* for additional information on incentive/disincentive provisions.

### **12-2.02 Review and Approval**

The local agency will submit the proposal to the district for review and approval. This review may be done concurrently with or subsequent to the review of the plans, specifications, and estimates. The project cannot be scheduled for letting until the proposal has been reviewed and approved by the district.



**12-3 LETTING AND AWARD PROCEDURES****12-3.01 Prequalification of Bidders****12-3.01(a) Prequalification Required**

All prospective bidders on construction contracts estimated to cost more than \$50,000 must be prequalified. The following criteria apply:

1. Highway Projects. IDOT prequalification is required for highway related projects.
2. Non-Highway Projects. For non-highway projects (e.g., independent bikeways, sidewalks, landscaping), the local agency may request approval from the district to use local contractor qualification procedures.
3. Building Projects. Capital Development Board (CDB) prequalification is required for building construction projects. Obtain a list of prequalified contractors from the CDB one week prior to issuing any proposals. Contractors are required to provide a copy of their CDB prequalification letter prior to receiving bidding documents.

**12-3.01(b) Prequalification Optional**

For contract construction projects estimated to cost less than \$50,000, the awarding agency has the option of using prequalification requirements. Likewise, prequalification of bidders is optional for all material proposals, regardless of the estimated cost. If prequalification is desired, include a special provision in the proposal. Note the prequalification requirements in the Notice of Letting that is published in the *Notice to Contractors Bulletin*.

**12-3.02 Advertising to Receive Bids****12-3.02(a) Notice of Letting**

Upon determination that a public letting is required for work to be performed by contract, a material proposal, or quotation, a Notice of Letting must be advertised to inform all potential bidders of the scheduled letting. Ensure that the Notice of Letting includes the following information:

- the location where the plans and proposals are available for distribution;
- the location, date, and time of the bid opening;
- a brief description of the project;
- major material quantities; and
- any prequalification requirements.

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This information is necessary to inform potential bidders of the size and nature of the projects. Prior to advertising for bids for MFT- and State-funded local work, the district must have approved the PS&E and proposal, and a statement that the right-of-way has been acquired must be on file in the district.

### 12-3.02(b) Contractors Bulletin

Local agency MFT- and State-funded projects with local lettings are advertised in IDOT's *Notice to Contractors Bulletin*. The bulletin is published on a weekly basis and is issued each Thursday. The bulletin is also available on IDOT's website. Each advertisement must appear in the bulletin not less than 11 days before the date on which bids are to be received. This enables the advertisement to appear in at least two issues of the bulletin.

All local-let projects financed with MFT or State funds must be advertised for letting in the Bulletin. IDOT requires no additional public notice; however, this does not relieve the local agency from complying with the State *Statutes* concerning these advertisements.

As a service to local agencies, projects financed with other funds may also be advertised in the bulletin. Project identification and major quantities should be provided to the district to be included in the advertisements for these projects.

Each district is responsible for inputting their respective advertisements into IDOT's information processing system. Once the entries have been verified and corrected, the district will transmit the advertisements to the Central BLRS and notify the Bureau bulletin manager. The entries and notification must be received in the Central BLRS prior to noon on Tuesday for a project to be advertised in the bulletin issued on Thursday of the same week. The district must be given adequate advanced notice of a scheduled letting in order to input the advertisement by the bulletin deadline. Contact the appropriate district office for district deadlines.

### 12-3.03 Issuing Bid Proposals

#### 12-3.03(a) General

The advertisement and notice of letting indicate where bidding proposals are available. It is the contractor's responsibility to request a proposal if the contractor is interested in bidding on a project.

For any letting, a local agency may refuse to issue authorization to bid to a prospective bidder for any of the following reasons:

- uncompleted work, which in the judgment of the local agency, might hinder or prevent the prompt completion of additional work awarded;
- false information provided on a bidder's Affidavit of Availability;

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- failure to pay, or satisfactorily settle, all bills due for labor and material on contracts in force at the time of issuance of proposal forms;
- failure to comply with any prequalification regulations of IDOT;
- default under previous contracts;
- unsatisfactory performance record as shown by past work for the local agency, judged from the standpoint of workmanship and progress;
- when the contractor is suspended from eligibility to bid at a public letting where the contract requires approval of IDOT;
- when any agent, servant, or employee of the prospective bidder currently serves as a member, employee, or agent of a governmental body that is financially involved in the proposal work; or
- when any agent, servant, or employee of the prospective bidder has participated in the preparation of plans or specifications for the proposed work.

A local agency may not, however, use unsatisfactory performance on work for another agency as a basis to deny the bidder a proposal. Denying a proposal to a contractor who is otherwise qualified to bid should be the result of a resolution enacted by the local agency governing board or council.

### 12-3.03(b) Prequalification Requirements

The following applies before the letting when prequalification is required:

1. Certificate of Eligibility. The local agency official who issues proposals to prospective bidders must make the proposals available only to contractors who furnish a certified or photostatic copy of their currently dated Certificate of Eligibility. The following conditions apply:
  - the total financial rating stated on the Certificate of Eligibility must equal or exceed the total estimated value of the project; and
  - the Certificate of Eligibility must show that the contractor has work ratings for the types of work on the project covering at least 50% of the estimated cost of the project.

This form must be kept on file by the local agency and made available to the IDOT representative at the letting.

2. Affidavit of Availability. At the option of the awarding agency, bidders may be required to furnish the Affidavit of Availability (Form BC-57) before the proposal is issued to the bidder. With this option, a special provision will need to be inserted in the proposal to be used in place of Check Sheet Item LRS 6 or LRS 7.

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3. Not For Bidding Proposals. The local agency may also issue proposals and plans to material suppliers or to other contractors wishing only to subcontract a part of the work, even though they are not prequalified. However, these proposals must be plainly stamped or marked, "NOT FOR BIDDING."
4. Bidding on Multiple Projects. If more than one project is scheduled at a letting, contractors may bid on all sections for which they are prequalified.
5. Joint Ventures. Prequalified contractors may combine their available bidding capacity and bid as a joint venture. The joint venture is limited to a maximum of three prequalified contractors. The contractors must notify the local agency of their intent to bid as a joint venture at the time of request for a proposal. Each contractor must provide a copy of his/her Certificate of Eligibility. A joint venture is not acceptable for projects estimated at less than \$1,000,000 if more than one of the proposed joint venture partners has an individual prequalification rating and bid capacity to bid the item without a joint venture. Contractors whose financial ratings are based upon unaudited financial statements will not be permitted to joint venture with each other to bid contracts that are estimated to exceed \$500,000.

### 12-3.04 Lettings

#### 12-3.04(a) **General**

If the contractor is a responsible bidder meeting the acceptance criteria of the local agency and IDOT, the award will be made to the contractor with the lowest bid once the bids are opened. This is known as award to the lowest responsive and responsible bidder. In addition to prequalification if required, the low bidder for all formal contract or any material proposal approved pursuant to Section 12-1.01(b)2 must comply with the following:

1. The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.
2. The bidder must comply with all applicable provisions of the Prevailing Wage Act.
3. The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.
4. The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.
5. The bidder must have a valid certificate of insurance showing the following coverage: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.

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6. The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training. The bidder must complete the certification included in the bid documents.

If a bidder does not comply with these requirements or fails to submit proper certification, the bidder is considered not responsible and ineligible for award. If the bid is awarded, MFT or State funds will not be allowed on the project.

### **12-3.04(b) Prequalification Requirements**

When prequalification is required, the following applies:

1. Certificates of Eligibility. Prior to opening a contractor's bid, the local agency representative must reexamine all Certificates of Eligibility, in accordance with Item 1 in Section 12-3.03(b). Concurrence of the contractor's eligibility must also be obtained from the IDOT representative at the letting prior to opening the bid.
2. Ineligible Contractors. The local agency is not required to read a bid from a contractor that does not meet prequalification and responsibility requirements.

### **12-3.04(c) Opening Bids**

At the time and place specified in the Notice of Letting, all bids received from bidders will be opened and read with the exception of any bid from a contractor that is not qualified as noted previously. Any bid received after the designated time shall be returned unopened to the bidder. The person reading the bid should state the name of the bidder, describe the Proposal Guaranty, and read the total bid amount for each contract or material group and all discounts, if applicable. Individual unit prices and extensions may be read at the option of the awarding agency.

### **12-3.05 Determination of Lowest Responsible Bidder**

#### **12-3.05(a) Extension of Unit Bid Prices**

After proposals are opened and read, the extension of the unit bid prices are to be checked along with the summation of those extensions. If a total price is not shown or there is a discrepancy between the product of the unit price multiplied by the quantity, the unit price will govern. Where a contractor's bid proposal does not contain a unit price for a pay item, but does contain a total price for the same item, the total price will govern and be considered in determining the contract bid price. The unit price for these items will be calculated by dividing the total price quoted by the number of units listed. The calculated unit price will be considered the unit price that the contractor intended to bid if the project is awarded. The calculated unit price will govern the payment for that item of work.

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If the contract proposal contains neither a unit price nor a total price for a pay item, the proposal must be rejected.

For material proposals, there must be either a unit price or a total price for all items in a bid group or the bid for that group must be rejected.

### 12-3.05(b) Affidavit of Availability

On projects requiring prequalification of bidders, the two lowest bidders are to file an Affidavit of Availability (Form BC-57) with the awarding agency within 24 hours of the letting. The Affidavit must:

- be notarized and dated currently;
- include the amount of all uncompleted work (i.e., either as principal or subcontractor);
- be based on the most recent engineer or owner's estimate;
- include the location and the name of the agency under which jurisdiction the work is to be performed;
- include the commitment of equipment and personnel on payroll or rental basis even though no formal contract exists;
- include a list of all work for which the contractor is low bidder that has not yet been awarded or rejected; and
- include a list of all subcontractors and the value of work sublet.

The data contained in the Affidavit is of a confidential nature and should not be discussed publicly at any time.

### 12-3.05(c) Bidding Capacity

Consider the following when analyzing a contractor's bidding capacity:

1. Available Financial Rating. The contractor's Available Financial Rating is computed by taking the combined value of uncompleted work the contractor has to perform with its own forces (Form BC-57, Part II) and deducting this amount from the contractor's financial rating as shown on the Certificate of Eligibility. The net result is the contractor's Available Financial Rating, which must equal or exceed the estimated value of the project.
2. Available Work Rating. The contractor's Available Work Rating is computed by first deducting from the individual work ratings on the Certificate of Eligibility, the value of all similar type of uncompleted work to be completed by the contractor's own forces as a prime or subcontractor included on Part II of Form BC-57. To determine the total Available Work Rating for a specific project, add the computed balance of the individual work rating for all work items applicable to the project; however, in this process, use the

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lesser of the balance of the individual work ratings or the estimated value for the work item in the project. The total Available Work Rating must equal or exceed 50% of the estimated value of the project, less any specialty items for the contractor to be awarded the contract.

When the proposed work requires more than one construction season (i.e., 18 months or 168 working days) to complete, the work ratings on the Certificate of Eligibility are multiplied by the number of construction seasons for completion. Any work underway on other projects is divided by the number of seasons to complete that project. The Available Work Rating is then determined using these adjustments.

3. Multiple Awards. If a contractor is the low bidder on two or more contracts, the sum of the bids must not exceed the available bidding capacity of the contractor, as determined in Item 2 above. The contract(s) awarded in this situation will be the choice of the local agency and not the contractor.

### **12-3.05(d) Return of Proposal Guaranty**

After all bids have been checked, tabulated, and the relationship between the proposals has been established, the Proposal Guaranty checks of all but the two lowest responsible bidders for each contract or material group must be returned promptly. Bid bonds will not be returned.

After three working days from the date of opening proposals, the local agency may permit the two lowest bidders to substitute bid bonds on Form BLR 12230 executed by corporate surety companies satisfactory to IDOT for the bank cashier's checks or certified checks submitted with their proposals as Proposal Guaranties.

### **12-3.06 Award or Rejection**

The awarding agency has the right to award the contract, to reject any or all proposals, to waive technicalities, to advertise for new proposals, or to proceed with the work if, in its judgment, the best interests of the awarding agency will be served.

#### **12-3.06(a) Award of Contracts and Material Proposals**

The county board, in the case of county or road district projects, or the city council or president and board of trustees, in the case of municipal projects, must make all awards. Committees of the governing body (e.g. road and bridge or public works committees) may not make awards.

The local agency may award a contract or accept a material proposal or quotation in the following circumstances:

1. Low Bid Below Estimate. If a contractor is the lowest bidder at or below the estimate and is recognized as responsible and eligible to bid, and all other factors are considered acceptable by the local agency and IDOT, the contract must be awarded to that

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contractor. In this case, MFT and/or State funds to the extent agreed upon will be authorized to the full extent of the contract costs.

2. Bid Over the Original Estimate. IDOT will not approve an award made for materials or contract construction that exceeds the estimate unless just cause for making the award is provided by the local agency. In these cases, IDOT will make an analysis of the justification for making the award and, if deemed necessary, the local agency will be asked to submit a revised estimate of the cost to justify its action.
3. Award Under Unusual Circumstances. If actions are taken that do not fall into the above options, IDOT will require a letter signed by the chairman of the county board, mayor, or president of the municipality, setting forth the reasons. When a road district(s) is involved, the highway commissioner(s) must also sign the letter or submit a supplementary letter. IDOT will review the reasons. If they are not satisfactory, IDOT may decline to approve the action.
4. Award to Other Than Low Bidder. If the local agency makes an award to a bidder other than the lowest responsible bidder, the following applies:
  - the local agency may rescind its action and award the contract to the lowest responsible bidder, in which MFT funds and/or State funds to the extent agreed upon may be used to the full extent of the contract cost; or
  - MFT and State funds will not be approved or authorized to finance any portion of the contract cost or material purchase should the local agency enter into a contract with other than the lowest responsible bidder.
5. Material Proposals. The following applies:
  - a. Bid Group. All items in a bid group must be awarded to the same bidder. The award is made based on the total bid for all items in the group.
  - b. Materials Delivered or Furnished and Spread. When bids are solicited for the purchase of materials that are to be furnished and spread on the road or are to be delivered to a specified location, the lowest responsible bidder will be awarded the contract to furnish the materials.
  - c. Materials to be Picked Up at Source. A local agency may take bids to purchase materials that are to be picked up at the source of supply. The determination of the successful bidder for these materials may depend upon a transportation cost in addition to the unit price bid for the material. The local agency must specify in the proposal how the transportation cost is to be calculated. This transportation cost is usually computed on a predetermined charge per mile (km) from the bidder's source to the job site or to a centrally located point(s) within the local agency's jurisdiction. After the bids are opened, the distance in miles (km) from the designated point(s) to each bidder's source of supply is determined. The



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lowest bidder for these materials is that bidder whose unit price bid plus the transportation represents the lowest on-the-road cost to the purchasing agency. In cases where there are multiple locations, it could entail awarding more than one bidder.

6. Quotations. When a local agency has solicited quotations rather than a material proposal for the purchase of materials, the local agency is responsible for providing copies of the Request for Quotations (Form BLR 12250) submitted by the material supplier to the district for approval. After approval, the local agency should return an approved copy to the supplier and retain one copy in their file. The quotations from all responsible bidders may be accepted. Where material is needed for a particular project or location, the supplier, whose quoted price plus transportation cost represents the lowest on-the-road cost to the local agency, will be asked to furnish the material for that work location. If a supplier, whose quoted price represents the lowest cost, is unable to furnish the material when requested, the local agency may purchase the material from the supplier whose quoted price is the next lowest. Documentation of these incidents must be kept on file for audit purposes. If a supplier is continually unable to furnish materials when requested, the local agency should consider that supplier non-responsible, document the details, and refuse to issue the supplier quotation requests for future work.
7. Time Frames. A local agency must award all MFT- and State-funded contracts or material proposals within 45 calendar days of the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all requirements prescribed. The local agency will notify the successful bidder by letter of intent that the bid has been accepted, and subject to the following conditions, that bidder will be the contractor.

If a contract or material proposal is not awarded within 45 days after the opening of proposals, bidders may file a written request with the awarding authority for the withdrawal of their bid, and the local agency must permit the withdrawal.

### 12-3.06(b) Rejection of Bids

Rejection of bids should be based on the following considerations:

1. All Bids Over Estimate. All bids are over the estimate, where no justification is provided for the higher bid, and the local agency is of the opinion that a lower bid can be obtained through readvertising.
2. Contractor Overextended. Due to overextension of the contractor's Maximum Available Work Rating or the contractor's Available Financial Rating, as determined in Section 12-3.05(c), a contractor with the low bid below the estimate is declared as not being a responsible bidder by the local agency and/or IDOT.

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3. Irregularities. Reasons for rejection of bids based on irregularities include one or more of the conditions discussed in Section 12-3.03(a) or any of the following reasons:

- more than one proposal for the same work from an individual, firm, partnership, or corporation under the same name or different names;
- evidence of collusion is found among bidders;
- unbalanced proposals in which the bid prices for some items are, in the judgment of the local agency and IDOT, out of proportion to the bid prices for other items;
- if the proposal does not contain a unit price or a total price for a pay item listed, except in the case of authorized alternative pay items or lump sum pay items;
- if the proposal is other than that furnished by the local agency, or if the proposal is altered or any part thereof is detached;
- if there are omissions, erasures, alterations, unauthorized additions, conditional or alternative bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning;
- if the bidder adds any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award;
- if the proposal is not accompanied by the proper Proposal Guaranty; or
- if the proposal is prepared with other than ink or typewriter, not properly signed, or otherwise fails to meet the requirements of the requirements of the special provisions.

If the lowest responsible bid is below the estimate and IDOT concurs with the local agency's reason for rejection, the project may be readvertised. IDOT may consider the low responsible bid that was submitted at the original letting as an established price for comparison purposes against the bid prices received at any subsequent letting for the same work. If considerable time has elapsed between the original and subsequent letting, the estimate of the cost may be adjusted due to inflation factors with the approval of IDOT.

### **12-3.07 Execution of Contracts and Material Proposals**

#### **12-3.07(a) Contracts**

An executed contract is required before a local agency is bound. An award may be cancelled at any time by the awarding authority prior to the execution to protect the public interest and integrity of the bidding process or for any other reason if, in the judgment of the local agency and IDOT, the best interests of the local agency will be promoted thereby. Once a contract has been awarded, it is in the best interest of all parties concerned to ensure that the contract is executed without delay.

The following applies with respect to the execution of the contract and contract bond:

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- When the local agency notifies the contractor of the agency's intent to award the contract, they will also send the contractor copies of the contract and contract bond form (Form BLR 12321) for execution by the contractor.
- The contractor will furnish the local agency performance and payment bond with good and sufficient sureties in the full amount of the contract as penal sum. The surety must be acceptable to the local agency, waive any notice of changes and extensions of time, and submit its bond on the form furnished by the local agency.

The contract will be executed by the successful bidder and returned, together with the contract bond, within 15 days after the contract has been mailed to the bidder. Failure of the successful bidder to execute the contract and file acceptable bonds within 15 days after the contract has been mailed to the bidder will be just cause for the cancellation of the award and the forfeiture of the Proposal Guaranty, which will become the property of the local agency, not as penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be readvertised and constructed under contract or otherwise, as the local agency and IDOT may decide.

If the bidder to whom the award is made is a corporation organized under the laws of a State other than Illinois, the bidder must furnish the local agency a copy of the corporation's Certificate of Authority to do business in the State of Illinois with the return of the executed contract and bond. Failure to furnish the Certificate of Authority within the time required will be considered as just cause for the annulment of the award and the forfeiture of the Proposal Guaranty to the local agency, not as penalty, but in payment of liquidated damages sustained as a result of this failure.

The execution of contracts by the chairman of the county board, or any duly designated contracting officer, attested to by the county clerk is considered by IDOT as sufficient evidence that the contracts have been legally awarded by action of the county board for county and road district projects.

The execution of contracts by the mayor, president of a village board, or president of a town board, or any duly designated contracting officer, attested to by the city clerk, village clerk, or town clerk, is considered by IDOT as sufficient evidence that the contracts have been legally awarded by action of the city council, village board, or town board for municipal projects.

The Proposal Guaranty checks of the two low bidders should be returned as soon as the contract and contract bond of the successful bidder have been executed and approved.

### **12-3.07(b) Material Proposals**

The Acceptance of Proposal to Furnish Material and Approval of Award (Form BLR 12330) is to be used for the award of material proposals. This form is the only documentation required for the district to approve the award, and together with the proposal booklet, constitutes a material purchase contract. Form BLR 12330 should contain all the information regarding the type of

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material, estimated quantities, unit price bid, and total amount plus point of delivery or shipping instructions. This form is to be signed by an appropriate local official and submitted to the district for approval. Approved copies of the form will be returned to the local agency. The local agency is required to return a copy to the successful bidder.

Local agencies have the option of permitting a successful bidder to furnish a contract bond for the full amount of the award or of retaining the bidder's proposal check in lieu of the contract bond until completion of the purchase. If a bid bond was provided for the Proposal Guaranty, a contract bond will be required. When a contract bond is required or furnished, the local agency will return the Proposal Guaranty check of the successful bidder upon receipt and approval of the contract bond. The local agency will indicate their desires relative to the Proposal Guaranty and contract bond by filling in the proper spaces on the Notice of Letting portion of Form BLR 12240.

The Proposal Guaranty of the second low bidder will be returned after the award of the material proposal to the low bidder.